

LA THANGUE et al
Appl. No. 09/900,147
April 23, 2004

REMARKS/ARGUMENTS

Reconsideration of this application and entry of the foregoing amendments are respectfully requested.

The Examiner's Summary of the March 1, 2004 interview indicates claims 28 and 29 are objected to as being dependent on a rejected base claim. This is not correct. Claim 29 depends from claim 28 which in turn depends from independent claim 27. No rejection of claim 27 is found in the Action. Accordingly, claims 27-29 should be indicated as allowable. Further comments regarding the substance of the March 1, 2004 interview are set forth in the Request filed March 2, 2004.

Claims 33-35 and 37 presently stand withdrawn from consideration. These method claims depend from elected product claims and it is submitted that rejoinder of these claims after allowance of the product claims will be in order and same is again requested. In view of this request, the claims have not been cancelled.

As regards the Examiner's objection to the drawings and drawing corrections set forth on pages 2-4 of the Action, attention is directed to the fact that the peptides of Figure 1 which are shown in Figure 3 include an additional tag which is a peptide containing 16 amino acid residues taken from the third helix of the antennapedia homeodomain protein, as noted on page 27, lines 9-31, of the subject specification. Page 28, lines 3-6, for example, makes clear that the asterisk (*) after the noted peptide name indicates the inclusion of the tag. Further, page 29, lines 17-20, for example, makes clear that the result of the tagged peptides are shown in Figure 3. It is submitted

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that these comments constitute an explanation for the changes and previous amendment to the figures and an explanation for the differences in labels of the peptides between Figures 1 and 3.

Claims 30 and 31 stand rejected under 35 USC 112, first paragraph, as allegedly being non-enabled. Withdrawal of the rejection is submitted to be in order for the reasons that follow.

It appears that this rejection is based, at least in part, on an alleged "failure" to provide any *in vivo* model data. Submitted herewith is a Declaration that sets out an experiment in mice that evidences the *in vivo* effectiveness of the compound of the invention.

The Examiner refers to the parent USP 6,268,334 in the rejection and suggests that there is a difference between the "pharmaceutically acceptable carrier" of claim 1 of that patent and the "pharmaceutical" of the present invention. While basis for this assertion is not seen, the term "pharmaceutical" has been removed from claims.

In view of the above, reconsideration is requested.

Claims 21-24, 32 and 36 stand rejected under 35 USC 102(e) as allegedly being anticipated by USP 5,863,757. Withdrawal of the rejection is submitted to be in order for the reasons that follow.

The claims as now presented read "consisting of" rather than "consisting essentially of". Furthermore, the instant claims specify that SEQ ID NO:1 can contain from 1 to 5 additional amino acids only and that those amino acids must be at either the

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N- or C-terminal of the polypeptide of SEQ ID NO:1. The polypeptide of SEQ ID NO:1 either with or without the 1 to 5 additional amino acids at the specific locations recited is not taught by the cited art. Accordingly, reconsideration is requested.

Claim 25 stands rejected under 35 USC 102(e) as allegedly being anticipated by USP 5,859,199. Withdrawal of the rejection is submitted to be in order for the reasons that follow.

The Examiner contends that the citation discloses a sequence similar to that of SEQ ID NO:1 of the present invention but which sequence has one amino acid difference at position 163 of SEQ ID NO:1 and is smaller than SEQ ID NO:1. The above-noted revision of claim 25 moots the rejection and reconsideration is requested.

Claims 23 and 24 stand rejected under 35 USC 112, second paragraph.

Withdrawal of the rejection is submitted to be in order in view of the above-noted revision of the claims to read "A fragment" rather than "A polypeptide fragment".

Reconsideration is requested.

This application is submitted to be in condition for allowance and a Notice to that effect is requested.

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Respectfully submitted,

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